that courts will not anticipate the omission of a legal duty. *State ex rel. Piper* v. *Gracey*, 11 Nev. 223. Many of these cases could be supported either on the ground that, like the remedy of specific performance, *mandamus* is granted only in the sound discretion of the court, or on the ground that no legal duty rested on the defendant. *United States ex rel. Langley* v. *Bowen*, 6 D. C. 196; *Northwestern Warehouse Co.* v. *Oregon Ry. & Navigation Co.*, 32 Wash. 218, 73 Pac. 388. The prevailing view seems inconsistent with the very nature of *mandamus*, which is to prevent a failure of justice. *Attorney General* v. *City of Boston*, 123 Mass. 460. As the court points out, often the benefits of the act will be lessened or lost, and irremediable damage done, unless it is performed within the stated time. *State ex rel. Howells* v. *Metcalf*, 18 S. D. 393, 100 N. W. 923. An opposite result would secure to the public punctual performance, and if the writ were not made peremptory, the defendant could not be unduly prejudiced by being forced to show justification for a refusal to perform. See *Chicago, etc. R. Co.* v. *Commissioners of Chase County*, 49 Kan. 399, 414, 30 Pac. 456, 459. The decision, although overruling previous Kansas cases, and contrary to the great weight of authority, shows a commendable tendency towards preventive justice.

MECHANICS' LIENS — EFFECT OF REPLACING DEFECTIVE MATERIALS ON TIME FOR FILING STATEMENT. — A statute made the lien of a subcontractor for materials furnished conditional on the filing of a statement within sixty days after furnishing the materials. A subcontractor replaced certain defective materials at the instance of the owner of the building and filed a statement within sixty days afterwards. The other materials furnished by the subcontractor were all delivered more than sixty days before the filing of the statement. *Held*, that the subcontractor has no lien for the materials furnished. *Cady Lumber Co.* v. *Reed*, 133 N. W. 424 (Neb.).

Under such statutes the period for filing the statement begins to run after the last item has been furnished under the contract. *Patton* v. *Matter*, 21 Ind. App. 277, 52 N. E. 173; *Hensel* v. *Johnson*, 94 Md. 729, 51 Atl. 575. The authorities on the question decided in the principal case are in conflict. The cases supporting the principal case are based on the ground that the materials are not furnished under the contract, but are given as a reparation for an injury inflicted. *Harrison* v. *Homœopathic Association*, 134 Pa. St. 558, 19 Atl. 804; *Voightman* v. *Southern Ry. Co.*, 123 Tenn. 452, 131 S. W. 982. The cases opposed argue that the materials are furnished under the contract, that in furnishing them the subcontractor fulfils a hitherto imperfectly performed obligation. *St. Louis National Stock Yards* v. *O'Reilly*, 85 Ill. 546; *Conlee* v. *Clark*, 14 Ind. App. 205, 42 N. E. 762. The analysis of the latter cases would seem correct. It might be urged in objection to this view that it would subject the owner to the danger of a double payment where he had paid the original contractor sixty days after the delivery but before the discovery of the defects. But in such a case, it is submitted, the subcontractor would be estopped for this purpose to set up that the subsequently furnished materials were furnished under the contract.

MECHANICS' LIENS — MATERIALS FURNISHED BUT NOT USED. — The plaintiffs supplied iron and steel work for the construction of the defendants' building. Owing to a change in the plans over which the plaintiffs had no control, a part of the materials furnished by them was never used. A statute provided that "whoever . . . furnishes labor or materials in erecting . . . a house, building, or appurtenances . . . has a lien thereon." *Held*, that the plaintiffs are not entitled to a lien for the unused materials. *Fletcher-Crowell Co.* v. *Chevalier*, 81 Atl. 578 (Me.).

Jurisdictions are squarely in conflict on whether materials furnished but